

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

VIRGINIA WOLF and CAROL
SCHUMACHER, ROY BADGER and
GARTH WANGEMANN, CHARVONNE
KEMP and MARIE CARLSON, and JUDITH
TRAMPF and KATHARINA HEYNING,

Plaintiffs,

v.

Case No. 14-cv-64

SCOTT WALKER, in his official capacity as
Governor of Wisconsin, J.B. VAN HOLLEN,
in his official capacity as Attorney General of
Wisconsin, RICHARD G. CHANDLER, in his
official capacity as Secretary of Revenue of
Wisconsin, OSKAR ANDERSON, in his
official capacity as State Registrar of Wisconsin,
GARY KING, in his official capacity as Eau
Claire County District Attorney, JOSEPH
CZARNEZKI, in his official capacity as
Milwaukee County Clerk, and SCOTT
McDONELL, in his official capacity as Dane
County Clerk,

Defendants.

ANSWER OF THE DEFENDANT, SCOTT MCDONELL, DANE COUNTY CLERK

The Defendant, Scott McDonell, hereby answers the Plaintiffs Complaint as follows:

1. The Defendant is without knowledge or information sufficient to form a belief as to the factual allegations of Paragraph 1. The Defendant agrees that Article XIII, § 13 of the Wisconsin Constitution bars same-sex marriages in Wisconsin, and further states that the provisions of Wisconsin Statutes, Chapter 765, prohibits him as County Clerk from issuing a marriage license to a same- sex couple. Furthermore, pursuant to Wis. Stat. §765.30(2)(c), .the

Defendant would be subject to a fine of up to \$10,000 and imprisonment for up to 9 months for issuing a marriage license to the Plaintiffs. The Defendant further agrees that the state constitutional and statutory ban on same-sex marriage is a violation of the Equal Protection and Due Process Clauses of the 14th Amendment to the United States Constitution.

2. The Defendant admits the allegations of Paragraphs 2, 3, 4 of the Complaint.

3. The Defendant is without knowledge or information sufficient to form a belief as to the truth of each and every allegation of Paragraph 5 of the Complaint.

4. The Defendant admits the allegations of Paragraph 6 of the Complaint.

5. The Defendant is without knowledge or information sufficient to form a belief as to the truth of each and every allegation of Paragraph 7 of the Complaint.

6. The allegations of Paragraph 8 do not require a response. The Defendant joins in the request of the Plaintiffs that the court declare unconstitutional and enjoin enforcement of Article XIII, §13 of the Wisconsin Constitution and any provisions of Wisconsin Statutes Chapter 765 that may be construed as limiting marriage to different sex couples on the grounds that they violate the Equal Protection and Due Process Clauses of the United States Constitution.

7. The Defendant admits the allegations of Paragraphs 9 and 10 of the Complaint.

8. The Defendant is without knowledge or information sufficient to form a belief as to the truth of each and every allegation of Paragraphs 11, 12, 13, and 14 of the Complaint.

9. The Defendant admits Paragraphs 15, 16, 17, 18, 19, 20 of the Complaint.

10. The Defendant admits the allegations of Paragraph 21, but states that as County Clerk he has no authority to issue a marriage license to a same-sex couple under existing state law.

11. The Defendant is without knowledge or information sufficient to form a belief as to the truth of each and every allegation of Paragraphs 22 thru 64 of the Complaint.

12. The Defendant admits Paragraphs 65 thru 102 of the Complaint.

13. The Defendant affirmatively states that he would not refuse to issue marriage a license solely because any person is a lesbian or gay person seeking to marry a person of the same sex. Defendant further affirmatively states that in his official capacity as County Clerk, he is prohibited by Wis. Stats. §765.12(1)(a) from issuing a marriage license to a same-sex couple. due to the specific prohibition of Art. XIII, §13 of the Wisconsin Constitution. Furthermore, Wis. Stat. §765.30(2)(b) provides that if a county clerk issues a marriage license contrary to or in violation of Chapter 765 he may be fined not more than \$10,000 and imprisoned for not more than 9 months, or both.

WHEREFORE, the Defendant, Scott McDonell, requests this Court enter Judgment:

A. declaring that Article XIII §13 of the Wisconsin Constitution and all provisions of the Wisconsin marriage laws (Wis. Stat. Chapter 765) that refer to marriage as a relationship between a “husband” and a “wife” and operate as a ban on marriage of same-sex couples violates the Due Process Clause and Equal Protection Clause of the 14th Amendment to the United States Constitution.

B. Declare that Scott McDonell, in his official capacity as Dane County Clerk, is authorized to and shall issue marriage licenses to same sex couples if all other requirements of Wisconsin law are met, and shall otherwise treat same sex couples in the same manner as all other applicants for marriage license.

C. Declare that all remaining Wisconsin laws, whether deriving from constitution, statute, administrative rule, policy, common law, or any other source of civil or criminal law, must be

interpreted and applied in a manner allowing same sex couples full access to the institution of civil marriage.

D. Deny Plaintiffs' request for an award of costs, expenses, and/or attorney's fees against the Defendant, Scott McDonell, in his capacity as Dane County Clerk.

Dated February _____, 2014.

DANE COUNTY CORPORATION COUNSEL

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